UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.348
13 November 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE 348th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 11 November 1998, at 10 a.m.

Chairman: Mr. BURNS

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GE.98-19492 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Yugoslavia (CAT/C/16/Add.7; HRI/CORE/1/Add.40)

1. At the invitation of the Chairman, Mr. Hodza, Mr. Djordjevic, Mr. Krstic, Mrs. Sokovic, Mrs. Nikolic and Mrs. Boskovic-Prodanovic (Yugoslavia) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce the initial report of Yugoslavia (CAT/C/16/Add.7).

3. Mr. HODZA (Yugoslavia) said that Yugoslavia, on ratifying the Convention in 1991, had recognized the Committee's competence under articles 21 and 22. His country had ratified all major human rights instruments, including the two International Covenants, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. It endeavoured in all cases, circumstances permitting, to honour its reporting obligations.

4. During the period covered by the report, the civil war in neighbouring countries and the harsh economic sanctions imposed on Yugoslavia had exerted a major adverse impact on the country's economic, political and social development as well as on the timely fulfilment of its obligations under international treaties, including the Convention.

5. The Federal Republic of Yugoslavia, comprising the republics of Serbia and Montenegro, was the successor State to the former Yugoslavia and had succeeded in preserving that country's internal stability and its multi-ethnic, multi-denominational and multicultural character. It had continued to provide for its citizens' basic needs despite international isolation, war among its neighbours, economic sanctions and the presence of some 700,000 refugees from Croatia and Bosnia and Herzegovina. Yugoslavia had also continued to foster civil society, the rule of law and respect for human rights. Both the Federal Constitution and the constitutions of the two republics guaranteed minority rights.

6. The Federal Constitution guaranteed the right to life, to physical and mental integrity, to privacy and to personal dignity and security. It guaranteed respect for human dignity in criminal and other judicial proceedings, both during periods of restriction or deprivation of liberty and during the enforcement of a penalty. No one could be subjected to torture or to degrading treatment or punishment. Medical and other experiments required the consent of the person concerned.

7. The Federal Constitution stipulated that everyone had the right to personal freedom, that no one could be deprived of freedom save as prescribed by law and that anyone deprived of his freedom had the right to retain a defence counsel. Arbitrary arrest, acts of violence against a person deprived of his liberty or whose liberty was restricted, and the extortion of

confessions or depositions were punishable offences. The constitutions and criminal legislation of the Federal Republic of Yugoslavia guaranteed the right to a fair trial, impunity for acts that had not been punishable at the time of commission, the presumption of innocence, the right of appeal, including access to extraordinary and constitutional remedies, and the right to rehabilitation and compensation for damages suffered in cases of wrongful deprivation of liberty or a baseless court ruling.

8. The Federal Constitution guaranteed equality to all citizens regardless of their ethnic origin, race, sex, language, religion, political or other beliefs, education, social background, financial status and other personal characteristics. All breaches of the principle of equality were punishable under the country's criminal law.

9. Following the adoption of the Federal Constitution in 1992, a large-scale legislative reform process had been initiated. The Federal Assembly was expected to adopt a new draft Federal Criminal Code in 1999 that would replace the Criminal Code of Yugoslavia, the Criminal Code of Serbia and the Criminal Code of Montenegro. The new Criminal Code, based on Yugoslav research and practice and on modern criminal legislation in other European countries, would contain no provision for capital punishment. A draft Code of Criminal Procedure was also being prepared in the light of similar principles.

10. The situation in the southern Serbian Autonomous Province of Kosovo and Metohija had recently attracted considerable attention in the international media. The 26 national minorities living in the territory of the Federal Republic of Yugoslavia accounted for about one third of the country's population. The Federal Constitution contained special provisions relating to persons from national minorities that were based on international standards, especially those laid down in the International Covenant on Civil and Political Rights and the Council of Europe's Framework Convention for the Protection of National Minorities. In Kosovo and Metohija, Albanian political parties and associations operated freely, many daily and weekly newspapers and books were published in the Albanian language and the electronic media broadcast a range of programmes in Albanian. Persons belonging to the Albanian national minority enjoyed all rights under the Constitution and the legislation of Yugoslavia, without restrictions.

11. However, a considerable number of persons belonging to that minority opted out of the country's social and political life, refusing to vote or stand for election, to take part in the population census and to exercise their educational and cultural rights. At the same time, they took advantage, when it suited them, of such rights as access to health care services, pensions and social welfare benefits and the right to register and operate private business firms.

12. Albanian terrorists with strong separatist tendencies had been operating in the territory of Kosovo and Metohija for several years. In the first nine months of 1998, some 1,500 terrorist incidents had claimed the lives of 152 civilians and over 100 police officers and had injured about 130 civilians and 380 police officers. The civilian victims had included Serbs, Montenegrins and persons belonging to the Albanian and other national minorities. Albanian

terrorists had intimidated, blackmailed and abducted civilians who refused to give them political, financial or other forms of support. They had abducted 260 civilians and 11 police officers.

13. The authorities had taken appropriate action, in accordance with the law, to deal with the terrorist threat. A political agreement had recently been concluded between President Slobodan Milosevic and the United States Special Representative Richard Holbrooke. An eleven-point plan had been adopted and time-limits set for a political settlement of the issue of Kosovo and Metohija. The Governments of the Federal Republic of Yugoslavia and of Serbia were determined to abide by all their undertakings in order to reach a peaceful political settlement as soon as possible. Pursuant to an Agreement concluded between the Federal Government and the Chairman of the Organization for Security and Cooperation in Europe (OSCE), an OSCE Verification Mission was currently being deployed.

14. Yugoslav legislation, particularly criminal legislation, had been brought into line with the Convention. There was no torture or ill-treatment - only cases of improper use or overstepping of authority, mostly in connection with the application of means of coercion such as physical force or truncheons. Such acts were punishable by law.

15. His Government trusted that its cooperation with the Committee would contribute to the full implementation of the Convention in Yugoslavia.

16. Mr. YAKOVLEV (Country Rapporteur) said that the high level of the Yugoslav delegation demonstrated a willingness on the part of the authorities to cooperate fully with the Committee.

17. The Committee strongly supported the principle that no internal or external circumstances could be invoked to justify breaches of the Convention and he commended Yugoslavia on its recognition of the Committee's competence to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claimed to be victims of a violation of the provisions of the Convention.

18. Yugoslavia's initial report had been due in 1992. He trusted that the Government would in future be more prompt in submitting its reports. It was gratifying, however, that article 25 of the Federal Constitution prohibited violence against persons deprived of their liberty and the extortion of confessions or depositions. The Committee would be interested, of course, to hear more about its practical application.

19. He welcomed the information that a new Criminal Code and a new Code of Criminal Procedure were being drafted and asked how the definition of torture contained in article 1 of the Convention was to be incorporated into that new legislation, in a manner that was not confined merely to violence by officials. With reference to paragraph 37 of the report, since some cases of ill-treatment had resulted in the death of detainees, did the sentences include imprisonment and, if so, for how long? Did the disciplinary tribunals mentioned include persons outside the police force, or members of the medical profession? What kind of rehabilitation treatment or compensation was available to victims in cases where abuse of power was clearly identified at

the time of sentencing? Was there an independent inspection system for places of detention, since such inspection could exercise a preventive effect? Did the training of prison staff, members of the police and judges include information on human rights and, specifically, on the Convention against Torture? Were courts bound to investigate complaints of torture during police detention? Had the rule of inadmissibility of evidence obtained under torture ever been applied by a court? He would also like information on prevailing social and political circumstances, which were extremely important, in conjunction with an appropriate legal framework, in implementing the Convention.

20. Mr. ZUPANČIČ (Alternate Country Rapporteur) commended the positive aspects of the report, but said he wished to raise certain technical and legal considerations. It was important clearly to define torture, in keeping with article 1 of the Convention, and systematically incorporate the offence of torture in the Criminal Code and other legislation, pursuant to article 4. Some States took the view that torture was covered by other related offences, but in fact the definition contained in article 1 was extremely specific and, ideally, should be incorporated in full. Intention and conspiracy to commit torture should also be punishable. Such considerations were particularly important as the Federal Republic of Yugoslavia was preparing to introduce its new criminal legislation.

21. In regard to article 15 of the Convention, a provision had been introduced into domestic legislation in 1974 on the inadmissibility of tainted evidence in trials, which would include evidence obtained under torture. However, thought should be given to preventing the judges responsible for deciding on the merits of cases from being exposed to such tainted evidence. Was it intended to incorporate the article 15 exclusionary rule in the new Criminal Code? If so, how would it be worded? Did the Constitutional Court have jurisdiction to hear cases submitted by individuals? If so, could they immediately apply to the Constitutional Court or was it necessary first to exhaust other remedies? If such a possibility did exist, how many such cases had been dealt with by the Constitutional Court? Was access granted to defence counsel during the three days in which a person could be held before being brought before the investigating judge? If a person alleged that torture had occurred during the period of police detention - the period when detainees were most exposed to such abuse - and then complained either to the investigating judge or the trial judge, was the prosecutor under an obligation to prosecute and, if so, did that occur in practice? How many such cases had been investigated, as required under the terms of article 12 of the Convention? What reasons had been advanced by the prosecutor in cases of non-prosecution and what had been the grounds for any acquittals?

22. It was regrettable that the initial report did not contain more extensive statistical information in connection with article 11. As to article 14, how many of the individuals who had obtained redress and were entitled to fair and equitable compensation had been victims of torture? What was the nature of the compensation? Lastly, the information contained in paragraphs 64, 65 and 66 dealt with the right of appeal and not the civil, rather than criminal, complaints that were the subject matter of article 13.

23. Mr. SØRENSEN said he endorsed the views of the two Rapporteurs. As a medical doctor, he would confine his remarks to articles 10 and 14. While he welcomed the checks carried out on the conduct of members of the police and the army and of medical personnel, the scope of article 10 was in fact considerably broader and required that both education and information should be fully included in training. For instance, where doctors were concerned, their role in inventing torture methods, treating victims so that they could continue to be tortured and falsifying medical reports, might be extensive. Similarly, given the number of torture victims in all parts of Serbia, doctors should be able to identify torture victims from the way in which they behaved and should be trained to treat them. How was the prohibition on torture dealt with in the undergraduate and post-graduate training of medical doctors, and when had it first been introduced?

24. While the Committee shared the concerns expressed about terrorist activity, article 2 explicitly stated that no exceptional circumstances whatsoever could justify torture. A number of discrepancies appeared to exist between the information contained in the report and that appearing in reports by reliable NGOs. He would like more up-to-date statistics for 1997 and 1998, including a breakdown for Kosovo. The crucial importance of article 14 must be emphasized. The impunity of torturers could not be tolerated, particularly since their prosecution might constitute an important element in the medical rehabilitation of victims. New rehabilitation centres had been established in Yugoslavia which should receive the fullest support in providing treatment for all victims since, according to NGO reports, all sides bore their share of responsibility. He invited the State party to contribute to the United Nations Voluntary Fund for the Victims of Torture, for even a token contribution would signal the Government's condemnation of the practice of torture.

25. Mr. MAVROMMATIS said he deeply hoped for a quick and peaceful settlement to the problems afflicting Yugoslavia, one that would respect the country's territorial integrity yet take account of the rights of minorities. In view of the many allegations made both by States and by non-governmental organizations, it would have behoved the State party to submit its report on time. For a sophisticated country like Yugoslavia, such a delay was inexplicable. He greatly welcomed the declaration made by Yugoslavia under article 22, which permitted individual citizens to petition the Committee directly. Had national legislation been enacted to provide for automatic enforcement of the Committee's decisions? Yugoslavia should make every effort to reply in detail to all allegations contained in communications under consideration in a treaty body and should avoid hiding behind blanket denials.

26. Furthermore, all States parties should incorporate in domestic law the definition of torture that was set out in the Convention, thereby demonstrating their good faith as well as their readiness to undertake measures to eradicate such practices. The Yugoslav Constitution made no mention of cruel, degrading or inhuman treatment in connection with violence against persons deprived of liberty. Safeguards should be built into the legal framework that would protect detained individuals in the first few hours after their arrests, which was the time when they were most likely to be

subjected to torture; the right to consult a lawyer before making any statement whatever; the right to notify others of the place of detention; and the right to see a doctor.

27. The report, which made no mention of Kosovo, glossed over the real nature of the situation. It was in situations of that kind that safeguards like the ones contained in the Convention were of the utmost importance, in which connection it would be useful to know how the Convention ranked in the domestic legal order. Was it equal to, or did it take precedence over, domestic legislation? In the event of a conflict between its terms and those of the domestic legislation, which prevailed? Could a law that postdated Yugoslavia's ratification of the Convention be inconsistent with the Convention?

28. Furthermore, paragraph 31 of the report was unclear: he would like to know whether military courts had jurisdiction over civilians and, if so, under what circumstances. Paragraph 37 stated that the police acted on the basis of laws and legal enactments which established the terms and conditions for the use of coercion. The State party should explain the meaning of that assertion. Again, paragraph 41 dubiously contended that almost all cases of complaints against officers of the Ministry of Justice were based on unfounded reports and complaints of citizens under criminal prosecution. In the view of the State party, could almost all complaints conceivably be unfounded?

29. Mr. EL MASRY said that not only had Yugoslavia ratified the Convention, but the Federal Assembly had made the declarations in connection with articles 21 and 22. Under the circumstances, the many reports of the widespread commission of torture in Kosovo were all the more shocking, in particular since such acts were not perpetrated solely against persons accused of terrorism. In Kosovo prisons, many atrocious acts had been committed against ethnic Albanians, some of whom had subsequently died. For example, Nait Hassani had been arrested and a day later had been taken to hospital in a coma as a result of the beating he had received. Arian Curri, arrested in Kosovo, had been tortured and a police officer had pulled out a knife and cut a cross on his chest. Other persons had disappeared, having last been seen in the custody of the Yugoslav police. It could not, of course, be assumed that all disappeared persons were in detention; some might have fled or gone into hiding. But in any event, the Yugoslav authorities must make public the number of persons they had detained, along with their names and other pertinent data.

30. In addition, reports revealed that summary executions had been carried out in places of detention. The Government must urgently conduct an investigation and prosecute the persons responsible for committing such egregious acts. Did the Government allow the International Committee of the Red Cross access to all persons detained in Kosovo? Even more important, did the Government recognize the competence of the International Criminal Tribunal for the Former Yugoslavia and, if so, what measures had been undertaken to facilitate its work?

31. Mr. YU Mengjia inquired whether Yugoslavia provided human rights education to law enforcement personnel, as stipulated in article 10. It was important to remember that article 2, paragraph 2, established that no

exceptional circumstances whatever should be invoked to justify acts of torture, and that article 4, paragraph 2, required States parties to make such offences punishable by appropriate penalties which took into account their grave nature. In view of the extraordinary situation in Yugoslavia, it would be useful to know whether law enforcement personnel readily accepted article 2 and, if they were reluctant to do so, what measures, if any, the Government had undertaken to persuade them to abide by its terms.

32. Mr. SILVA HENRIQUES GASPAR said he too wished to voice his concern about the issues and questions raised by other members of the Committee. Several other questions also came to mind. First, the procedure whereby the detainee was responsible for requesting the intervention of a judge within a set period of time after his arrest seemed highly unusual. Under systems of comparative international law, it was the judge who must obligatorily intervene. Had that procedure changed under the new Law on Criminal Procedure? Second, he would like to know what the composition and competence of the military courts were, and in particular, what safeguards existed to ensure the independence of the judiciary.

33. Third, it would be useful to know whether the police units that conducted interrogations were empowered to act independently. What mechanisms existed to supervise their activities? If standards of conduct were violated, what measures, if any, were taken to punish offenders? Could the decisions be appealed? Was the person whose rights had been violated permitted to participate in disciplinary proceedings?

34. The CHAIRMAN said it would be useful to know what the Serbian Special Police was and what powers that force enjoyed. What was the structure of its chain of command and to whom was it accountable? He would also like to know whether there existed in Yugoslavia a doctrine equivalent or similar to that of habeas corpus. When a state of emergency was declared, what legal protections remained and which were suspended?

35. In Kosovo, many instances had been documented of the mutilation of non-combatants, both before and after death. Had investigations been conducted and, if so, what were the results? Many cases of torture had been brought to the attention of the Committee by a number of independent sources. The October 1998 issue of *Human Rights Watch* stated that during July and August detained individuals had increasingly included human rights activists, humanitarian aid workers, political party members, doctors and lawyers, many of whom had been physically abused in custody. It went on to say that that organization had substantial credible evidence from lawyers and family members that detainees were routinely tortured and ill-treated. Some had died; hundreds had been beaten. It indicated that, according to the Yugoslav Government, a round of trials would begin in October, and stated that in the past terrorism-related trials had been marred by serious procedural irregularities, as well as the use of torture to extort confessions.

36. Among the individual cases described was that of Mr. Destan Rukiqui, a lawyer in Priština who had defended dozens of ethnic Albarian political prisoners in recent years. He had been arrested in July 1998 after an incident in which he had objected to the district judge's refusal to permit him to take notes while reviewing the case file of his client. In prison, he

had been severely beaten with a three-foot long baton. Although that was not, of course, the most severe of the reported cases of torture in Kosovo, it could perhaps be seen as illustrative. Was it a common practice to forbid lawyers to take notes during trials and, if so, what was the rationale?

37. In its introduction, the delegation had stated that there was a large press corps in Yugoslavia. He asked whether Yugoslavia's press and television media were free and independent. Again, how were judges appointed and for what period? Who reviewed whether members of the judiciary needed to be disciplined? It was also of some concern to the Committee that legislation recently enacted in Yugoslavia allowed the authorities to remove administrators, and even instructors, from universities.

38. The Committee had received abundant material on the ill-treatment of Roma and Albanian detainees. Drawing attention to the definition of torture in article 1 of the Convention, which included severe pain and suffering inflicted for reasons based on discrimination, he asked whether the delegation considered those reports to be false. What sort of processes were available to respond to such allegations, and were they under way at the moment?

39. The Committee tended to focus on article 1, but article 16, on cruel, inhuman or degrading treatment or punishment, was equally important. Indeed, the information the Committee received often fell under article 16 rather than article 1. What remedies were open to persons who considered that their rights under articles 1 and 16 had been violated, were they accessible to the various groups in Yugoslavia, and how many cases were currently being dealt with?

40. He invited the delegation of Yugoslavia to reply to the Committee's questions at the next meeting.

41. The delegation of Yugoslavia withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

42. The CHAIRMAN said that at the tenth meeting of chairpersons of human rights treaty bodies, one of the items on the agenda had been a plan of action to persuade States parties to increase their financial support for the Committee against Torture, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. A draft plan had been presented to the chairpersons, who had taught that it needed to be revised and strengthened. Consequently, it had been decided that the plan would be put back on the agenda of the next meeting of chairpersons, in May 1999. In the meantime, the Secretariat had been asked to provide him with a new draft and a proposal had been made to set up a working group to monitor progress by the Secretariat on the plan. The suggestion was that two members from each committee be appointed to do so. He asked whether two members would volunteer to discharge that task.

43. Mr. SILVA HENRIQUES GASPAR and Mr. MAVROMMATIS offered to serve the Committee in that function.

Progress made in the open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

44. The CHAIRMAN asked Mr. Sørensen to report to the Committee on developments in the working group on the optional protocol.

45. Mr. SØRENSEN said that the open-ended group had met from 28 September to 9 October 1998. It was currently in its seventh or eighth year and was engaged in the second reading of the draft.

46. Only limited progress had been made at the meeting. For example, it had not been possible to adopt the meeting's report, which would be done at a later date. The meeting had, however, adopted two articles. The first had been article 15 (former article 12 bis), which read: "Each State Party shall disseminate information about this Protocol, the tasks of the Sub-Committee and the facilities to be provided to the Sub-Committee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 1". It was a very important article and would be very useful to visiting delegations. It was worth noting that, when the Council of Europe's Committee for the Prevention of Torture was about to visit a country, it always sent the head of the delegation a couple of months in advance to explain what it intended to do.

47. The other article adopted at the meeting had been article 19 (previously article 18), which simply stated that the protocol would enter into force 30 days following the deposit with the Secretary-General of the twentieth instrument of ratification or accession.

48. It seemed that all the non-controversial issues had been cleared up, and that the crucial points had remained, including articles 1, 8 and 12.

49. Concerning article 1 of the draft, some States were in favour of visits to countries only on invitation, while others thought that prior consent should be required. The majority nonetheless agreed that, if that was the case, then there was no point in having a protocol. It was strongly felt that the protocol should allow visits to countries and that acceptance of visits was implicit in the ratification of the protocol.

50. A lengthy discussion had been held on the mandate during such visits, but the matter did not seem to pose great difficulties. A delegation should be allowed to go wherever persons were being deprived of their liberty, talk with them privately, visit premises and the cells, inspect all relevant documents and make return and unannounced visits. The general view had been that a United Nations body must respect national law. He had drawn attention to article 8, paragraph 2 (d), of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, under which a party must provide the Committee for the Prevention of Torture with all information available to it that was necessary for the Committee to carry out its task and that, in seeking such information, the Committee should have regard to applicable rules of national law and professional ethics.

Revised programme of work

51. The CHAIRMAN said that the revised programme of work, which had been circulated, took into account changes in practices for dealing with States parties and afforded the Committee more time to reflect on its conclusions. States parties would shortly be informed of the changes.

Drafting of a list of recurrent issues

52. Mr. BRUNI (Secretary of the Committee) said that the Committee had been asked to identify certain issues which recurred in dialogues with States parties. That had already been done a long time ago, under the chairmanship of Mr. Voyame. A list of such issues, which appeared in document CAT/C/XXI/Misc.1, had been translated for possible discussion. It was not exhaustive. The purpose was to provide government delegations with a general idea of what questions to expect and it was also useful for those who prepared training courses. It was simply an informal guide.

53. Mr. ZUPANČIČ said he was pleased that the list had been made available. It would also be useful to draw up a questionnaire for States parties, which would in addition be valuable for producing comparative statistics. He was prepared to assist such an effort.

54. The CHAIRMAN proposed that, when the Committee reverted to the question next week, members who so wished could make suggestions for improving the list or for drafting such a questionnaire.

The meeting rose at 12.40 p.m.